

1 HONORABLE TANA LIN
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8 UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 COSTCO WHOLESALE CORPORATION, a
12 Washington corporation,

13 Plaintiff,

14 v.

15 LIBERTY MUTUAL FIRE INSURANCE
16 COMPANY, a foreign insurer authorized by
17 the Washington insurance commissioner,

18 Defendant.

19 CASE NO. 22-cv-1338-TL

20 **STIPULATED PROTECTIVE ORDER**

21 1. **PURPOSES AND LIMITATIONS**

22 Discovery in this action is likely to involve production of confidential, proprietary, or
23 private information for which special protection may be warranted. Accordingly, the parties hereby
24 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
25 acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
26 protection on all disclosures or responses to discovery, the protection it affords from public
disclosure and use extends only to the limited information or items that are entitled to confidential
treatment under the applicable legal principles, and it does not presumptively entitle parties to file
confidential information under seal.

1 2. **“CONFIDENTIAL” MATERIAL**

2 **2.1 Documents from the Underlying Lawsuit**

3 “Confidential” material shall include the following documents and tangible things
4 produced or otherwise exchanged. [The terms “St. Hilaire Lawsuit,” and “Underlying
5 Lawsuit” means the lawsuit filed by Gene St. Hilaire against Costco Wholesale
6 Corporation, including California State Court, Orange County Case No. 30-2018-
7 00980124-CU-PO-CJC, and United States District Court, Central District of California
8 Case No. 8:18-cv-01143-JVS-JDE.]

9 a. Settlement Agreement and Release between St. Hilaire and Costco in the St. Hilaire
10 Lawsuit;
11 b. Medical records produced in the St. Hilaire Lawsuit;
12 c. Settlement communications in the St. Hilaire Lawsuit;
13 d. Attorney billing documentation for fees and costs incurred in the St. Hilaire Lawsuit
14 as well as for fees and costs incurred in this matter for pursuit of insurance
15 coverage; and
16 e. Discoverable files and records of Costco’s defense counsel in the St. Hilaire
17 Lawsuit.

18 **2.2 Additional Confidential Material**

19 In addition to the documents and information identified above, each party or third-party
20 may, in responding to another party’s discovery request or subpoenas, designate, in
21 accordance with the methods set forth in Section 5 below, as “Confidential” any
22 document, thing or information that the producing party believes in good faith contains
23 materials protected under any privilege or protection from disclosure.

24 **2.3 Non-Waiver of Objections**

25 The designation of the above documents as “confidential” is not intended to be a
26

1 concession that the documents are discoverable, and should not be construed as a waiver
2 of any rights or objections under any applicable federal or local rule.

3. **SCOPE**

4 The protections conferred by this agreement cover not only confidential material (as
5 defined above), but also (1) any information copied or extracted from confidential material; (2) all
6 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
7 conversations, or presentations by parties or their counsel that might reveal confidential material.

8 However, the protections conferred by this agreement do not cover information that is in
9 the public domain or becomes part of the public domain through trial or otherwise.

10. **ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

11. 4.1 **Basic Principles.** A receiving party may use confidential material that is disclosed
12 or produced by another party or by a non-party in connection with this case only for prosecuting,
13 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
14 categories of persons and under the conditions described in this agreement. Confidential material
15 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
16 that access is limited to the persons authorized under this agreement.

17. 4.2 **Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise ordered
18 by the court or permitted in writing by the designating party, a receiving party may disclose any
19 confidential material only to:

20. (a) the receiving party’s counsel of record in this action, as well as employees
21 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

22. (b) the officers, directors, and employees (including in house counsel) of the
23 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
24 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
25 designated;

26. (c) experts and consultants to whom disclosure is reasonably necessary for this

1 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (d) the court, court personnel, and court reporters and their staff;

3 (e) copy or imaging services retained by counsel to assist in the duplication of
4 confidential material, provided that counsel for the party retaining the copy or imaging service
5 instructs the service not to disclose any confidential material to third parties and to immediately
6 return all originals and copies of any confidential material;

7 (f) during their depositions, witnesses in the action to whom disclosure is
8 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
9 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
10 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
11 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
12 under this agreement;

13 (g) the author or recipient of a document containing the information or a
14 custodian or other person who otherwise possessed or knew the information.

15 4.3 Filing Confidential Material. Before filing confidential material or discussing or
16 referencing such material in court filings, the filing party shall confer with the designating party,
17 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
18 remove the confidential designation, whether the document can be redacted, or whether a motion
19 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
20 designating party must identify the basis for sealing the specific confidential information at issue,
21 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
22 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
23 the standards that will be applied when a party seeks permission from the court to file material
24 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
25 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
26 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with

1 the strong presumption of public access to the Court's files.

2 5. **DESIGNATING PROTECTED MATERIAL**

3 5.1 **Exercise of Restraint and Care in Designating Material for Protection.** Each party
 4 or non-party that designates information or items for protection under this agreement must take
 5 care to limit any such designation to specific material that qualifies under the appropriate
 6 standards. The designating party must designate for protection only those parts of material,
 7 documents, items, or oral or written communications that qualify, so that other portions of the
 8 material, documents, items, or communications for which protection is not warranted are not swept
 9 unjustifiably within the ambit of this agreement.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 11 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 12 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
 13 and burdens on other parties) expose the designating party to sanctions.

14 If it comes to a designating party's attention that information or items that it designated for
 15 protection do not qualify for protection, the designating party must promptly notify all other parties
 16 that it is withdrawing the mistaken designation.

17 5.2 **Manner and Timing of Designations.** Except as otherwise provided in this
 18 agreement (see, e.g., second paragraph of section 5.2(b) below), or as otherwise stipulated or
 19 ordered, disclosure or discovery material that qualifies for protection under this agreement must
 20 be clearly so designated before or when the material is disclosed or produced.

21 (a) **Information in documentary form:** (e.g., paper or electronic documents and
 22 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
 23 the designating party must affix the word "CONFIDENTIAL" to each page that contains
 24 confidential material. If only a portion or portions of the material on a page qualifies for protection,
 25 the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate
 26 markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration

1 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
 2 affected parties in an effort to resolve the dispute without court action. The certification must list
 3 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
 4 to-face meeting or a telephone conference.

5 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 6 intervention, the designating party may file and serve a motion to retain confidentiality under Local
 7 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 8 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
 9 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
 10 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
 11 the material in question as confidential until the court rules on the challenge.

12 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 13 LITIGATION

14 If a party is served with a subpoena or a court order issued in other litigation that compels
 15 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
 16 must:

17 (a) promptly notify the designating party in writing and include a copy of the
 18 subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to
 20 issue in the other litigation that some or all of the material covered by the subpoena or order is
 21 subject to this agreement. Such notification shall include a copy of this agreement; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
 23 the designating party whose confidential material may be affected.

24 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
 26 material to any person or in any circumstance not authorized under this agreement, the receiving

1 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
2 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
3 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
4 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
5 Bound" that is attached hereto as Exhibit A.

6 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
7 **MATERIAL**

8 When a producing party gives notice to receiving parties that certain inadvertently
9 produced material is subject to a claim of privilege or other protection, the obligations of the
10 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
11 is not intended to modify whatever procedure may be established in an e-discovery order or
12 agreement that provides for production without prior privilege review. The parties agree to the
13 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

14
15 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

16 Within 60 days after the termination of this action, including all appeals, each receiving
17 party must return all confidential material to the producing party, including all copies, extracts and
18 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

19 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
20 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
21 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
22 product, even if such materials contain confidential material.

23 The confidentiality obligations imposed by this agreement shall remain in effect until a
24 designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 BUCHALTER PC

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4 DATED: 6/29/2023

/s/ Jennifer R. Oswald

Bradley Hoff, WSBA #23974
Jennifer R. Oswald, WSBA #43253

6 *Attorneys for Plaintiff*

7 BULLIVANT HOUSER BAILEY PC

8
9 DATED: 6/29/2023

/s/ Tarin Schalow via email authorization

Michael Guadagno, WSBA #34633
Jared F. Kiess, WSBA #54532
Tarin Schalow, WSBA #60047

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11 *Attorneys for Defendant*

12 PURSUANT TO STIPULATION, IT IS SO ORDERED.¹

13
14 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
15 documents, electronically stored information (ESI) or information, whether inadvertent or
16 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or
17 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
18 documents, including the attorney-client privilege, attorney work-product protection, or any other
19 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum
20 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.
21 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review
22 of documents, ESI or information (including metadata) for relevance, responsiveness and/or
23 segregation of privileged and/or protected information before production. Information produced
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25
26 ¹ The Court has reviewed the redline comparing the Parties' stipulated proposed protective order against the model
order of this District, submitted by the Parties in response to the Court's order on June 30, 2023. Dkt. No. 22.

1 in discovery that is protected as privileged or work product shall be immediately returned to the
2 producing party.

DATED: This 3rd day of July 2023


Tana Lin
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on [date] in the
7 case of *Costco Wholesale Corporation v. Liberty Mutual Fire Insurance Company*, 22-cv-1338-
8 TL. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and
9 I understand and acknowledge that failure to so comply could expose me to sanctions and
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
11 any information or item that is subject to this Stipulated Protective Order to any person or entity
12 except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 | City and State where sworn and signed: _____

18 || Printed name:

19 || Signature: